



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

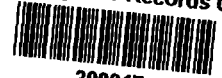
REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

JUN 01 1992

EPA Region 5 Records Ctr.



200017

REPLY TO THE ATTENTION OF:

HSE-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Himco Waste Away Service, Inc.
c/o Richard W. Paulen
Barnes & Thornburg
305 First National Bank Building
301 South Main Street
Elkhart, Indiana 56516

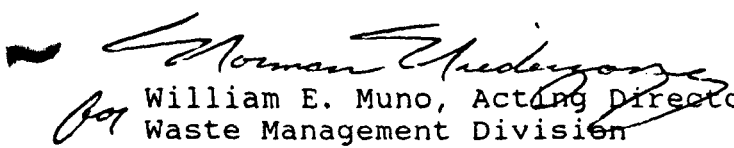
Re: Himco Dump Site

Dear Mr. Paulen:

Enclosed please find an executed copy of the Administrative Order by Consent issued for this site pursuant to Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Sections 9601 et seq. Thank you for your cooperation in this matter.

If you have any questions regarding this Order, please contact Thomas Nash, Assistant Regional Counsel, at (312) 886-0552 or Paul Steadman, On-Scene Coordinator, at (312) 353-7615.

Sincerely yours,


William E. Muno, Acting Director
Waste Management Division

Enclosure

cc: Himco Waste Away Service, Inc.
707 North Wildwood Avenue
Elkhart, Indiana 46514

Greta Hawvermale, Assistant Commissioner
Office of Environmental Response
Indiana Department of Environmental Management
5500 West Bradbury Avenue
Indianapolis, Indiana 46241

bcc:

Tom Pernell, ORC (CS-3T)
Tom Nash ORC Attorney, ORC (CS-3T)
Paul Steadman, OSC (HSE-5J)
Carol Graszer, ESS (HSE-5J)
Maureen O'Mara, ESS (HSE-5J)
Karen Martin, public Affairs (P-19J)
Mary Elaine Gustafson, RPM (HSRL-6J)
Tony Audia, SFAS (MF-10J)
Oliver Warnsley, RP-CRU (HSRLT-5J)
EERB Site File
EERB Read
Toni Lesser, Public Affairs (P-19J) w/outattach.
Sheila Huff, Department of Interior

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION V

IN THE MATTER OF:

HIMCO DUMP

Respondents:

HIMCO WASTE AWAY SERVICES, INC.

) Docket No. V-W-88-C-152
)
)
) ADMINISTRATIVE ORDER BY
) CONSENT PURSUANT TO
) SECTION 106 OF THE
) COMPREHENSIVE
) ENVIRONMENTAL RESPONSE,
) COMPENSATION AND
) LIABILITY ACT OF 1980,
) as amended, 42 U.S.C.
) Section 9606(a)
)

PREAMBLE

The United States Environmental Protection Agency (U.S. EPA) and the Respondent have each agreed to the making and entry of this Order by Consent.

It is issued pursuant to the authority vested in the President of the United States by Sections 106(a) and 122 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9606(a), as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499 (CERCLA), and delegated to the Administrator of the U.S. EPA by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Assistant Administrator for Solid Waste and Emergency Response and the Regional Administrators by U.S. EPA Delegation Nos. 14-14, 14-14-C and 14-14-D, and to the Director, Waste Management Division, Region V, by Regional Delegation Nos. 14-14-A, 14-14-C and 14-14-D.

A copy of this Order will also be provided to the State of Indiana, which has been notified of the issuance of this Order as required by Section 106(a) of CERCLA, 42 U.S.C. Section 9606(a).

This Order requires the Respondent to undertake and complete emergency removal activities to abate conditions which may present an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of hazardous substances at the site.

FINDINGS

Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds:

1. The Himco Dump Site (Himco) is located off Elkhart County Road 10 and is approximately one-half mile northwest of the corporate limits of the City of Elkhart whose population is approximately 36,000 residents. The site is located adjacent to a residential area. Hydrogeologic investigations and hydrographs indicate that the direction of groundwater flow beneath the site is to the south/southeast in the direction of the St. Joseph River which is located on a meandering course about three-quarters of a mile to the south of this site.
2. Himco is an approximately 50 acre site which operated as an unpermitted landfill during the years 1960 through 1976. The landfilling occurred within a marsh and grassland area. Controls such as liners were not installed to prevent contamination of the ground and surface waters from materials deposited in this facility. The chief constituents of the wastes disposed in the landfill were calcium sulfate sludges from a major laboratory in the Elkhart, Indiana area.
3. In 1974, nearby residents to Himco complained to the Indiana State Board of Health (ISBH) of color, taste, and odor problems in their shallow wells. The State sampled these wells and analyzed the samples for such parameters as chloride, COD, total dissolved solids, metals and sulfates. The results of those analyses indicated excess levels of manganese and iron. Subsequently, Himco was advised by ISBH to replace six shallow wells, finished at depths of approximately 22 ft., for the residences immediately south of the landfill on County Road 10. The new wells were installed and finished at depths of 152 to 172 feet below ground surface.
4. In 1976 a Consent Agreement with the ISBH Stream Pollution Control Board was signed by Mr. Charles Himes, Senior, the owner and operator of the site. Mr. Himes closed the site in September 1976 with the application of final cover consisting of calcium sulfate overlain by sand.
5. In 1984, a Field Investigation Team (FIT), under the authority of U.S. EPA, conducted a site inspection of the Himco Dump. Laboratory analysis results of wells sampled by the FIT representatives indicated that the groundwater was contaminated with metals and VOCs.

6. In February 1990, representatives of U.S. EPA's Emergency & Enforcement Response Branch (EERB), Region V assisted by Technical Assistance Team (TAT) members of the Roy F. Weston Company sampled water from 27 homes in the vicinity of the Himco Dump. The analysis of those samples showed generally high levels (3600 ppm) of sodium which had profound implications for persons who suffer from hypertension, diabetes and heart ailments. In 1991, as a result of that sampling, Himco Waste Away Services, Inc., Miles Laboratories and the City of Elkhart paid for extension of municipal water services to many of the residents who were formerly on a private well water supply which had been affected by the dump's condition.
7. The site has been on the NPL (National Priorities List) since February 1990.
8. Test pits were excavated to characterize the site's constituents during the Remedial Investigation (RI). In September 1991 large quantities of leachate were observed flowing from the fill materials during one of these excavations. The leachate was observed near the southern edge of the landfill. The leachate was analyzed and found to contain, among other hazardous substances, organic solvents including 2-methyl-2-pentanone (17,000 ppm), toluene (480,000 ppm), xylene (44,000 ppm), ethylbenzene (6400 ppm), and 2-hexanone (29,000 ppm). These contaminants all have an inhalation and contact hazard to persons near the site, pose a serious fire and potential explosion hazard, and have flash points ranging from 40 to 95 degrees Fahrenheit. The quantity and source of these materials is currently undetermined.
9. The test pit where the toluene and other hazardous substances referred to above was found is about fifty yards from private residences. Access to the site is unrestricted enabling vehicles, individuals and wildlife uninhibited entry.
10. The need for an emergency removal action at the Himco Site was first recognized during the EERB's annual review of NPL sites on March 26, 1992.

DETERMINATIONS

Based on the foregoing Findings, U.S. EPA has determined that:

1. Himco Dump is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. Section 9601(9).
2. The Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. Section 9601(21).

3. The Respondent is a past or present owner, operator, or was a transporter of waste to the facility. The Respondent is therefore a liable person under Section 107(a) of CERCLA, 42 U.S.C. Section 9607(a).

4. Toluene, ethylbenzene, 2-hexanone, 2-methyl-2-pentanone, xylene and ignitable materials are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. Section 9601(14).

5. The presence of highly concentrated toluene and the other identified volatile organic chemicals found flowing from the fill materials in the test pit constitutes an actual or threatened "release" as that term is defined in Section 101(22) of CERCLA, 42 U.S.C. Section 9601(22).

6. The actual or threatened release of hazardous substances from the Facility may present an imminent and substantial endangerment to the public health, welfare, or the environment.

7. The actions required by this Order, if properly performed, are consistent with the National Contingency Plan (NCP), 40 CFR Part 300, as amended, and CERCLA; and are reasonable and necessary to protect the public health, welfare and the environment because of the following factors:

- a. actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants or contaminants;

This factor is present at the Himco Dump Site due to the presence of potentially large quantities of flammable and hazardous substances found at extremely elevated concentrations in an area near the southern edge of the site where no controls are in place to prevent their migration from the site into adjacent areas including private residential lots. There is evidence of small animal burrowing within the site area which puts wildlife at undue risk of illness and death when they may come into contact with the organic chemical constituents identified at this facility.

- b. actual or potential contamination of drinking water supplies or sensitive ecosystems;

This factor exists at the Site due to the presence of contaminants, including volatile organic chemical compounds such as Toluene, Xylene, 2-Hexanone, Ethyl Benzene, and 4-Methyl-2-Pentanone deposited in at least one discrete area near the southern edge of the site where no containment mechanisms are in place to prevent their spread and impact upon three surface water systems within the site which currently support apparently healthy populations of fish and other aquatic fauna. As well,

past records of this site's overall impacts on drinking water supplies required abandonment of private residential wells.

- c. high levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface that may migrate;**

The presence of this environmental threat is manifested by the high concentrations of volatile organic chemicals detected in the soils located near the southern edge of this site. The HNU and OVA instrumentation readings indicated high responses to vapors from the contaminants right at the soil surface. The VOCs are located at a depth of about three or four feet below land surface.

- d. weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or to be released;**

This factor is present at the site due to the existence of exposed surface soils which are largely permeable allowing uninhibited infiltration of rainfall which is estimated to fall over the site area at an annual rate of 27.3 inches per year. In addition, mean annual velocity of winds in the area are reported to be between 6.9 and 10.2 miles per hour. These factors contribute to the potential for waterborne or airborne transport of the VOCs to surrounding areas, as well as erosion of the soils over time which would expose these contaminants and thus increase the risk for endangerment of human health and the environment.

- e. threat of fire or explosion;**

This factor is present at the Facility due to the existence of low flashpoint liquids showing ignitability characteristics as low as 40 degrees Fahrenheit. One carelessly deposited cigarette or one spark from an internal combustion engine would be sufficient to start a serious conflagration and possibly an explosion based on the quantity of the contaminants at the site.

- f. other situations or factors which may pose threats to public health or welfare or the environment;**

This factor exists at the site due to lack of adequate site access controls, warning signs and other means to prevent undue risk of exposure to persons who might inadvertently enter the site area.

ORDER

Based upon the foregoing Findings and Determinations, and pursuant to Section 106(a) of CERCLA, 42 U.S.C. Section 9606(a),

it is hereby ordered and agreed that Respondent will undertake the following actions at the Facility:

1. By May 15, 1992 the Respondent shall submit to U.S. EPA for approval, a Work Plan for the removal activities ordered as set forth in Paragraph 4 below. The Work Plan shall provide a concise description of the activities to be conducted to comply with the requirements of this Order. The Work Plan shall be reviewed by U.S. EPA, which may approve, disapprove, require revisions, or modify the Work Plan. Respondent shall implement the Work Plan as finally approved by U.S. EPA, including any modifications. Once approved, the Work Plan shall be deemed to be incorporated into and made a fully enforceable part of this Order.
2. The Work Plan shall contain a site safety and health plan, a sampling and analysis plan, and a schedule of the work to be performed. The site safety and health plan shall be prepared in accordance with the Occupational Safety and Health Administration (OSHA) regulations applicable to Hazardous Waste Operations and Emergency Response, 29 CFR Part 1910. The Work Plan and other submitted documents shall demonstrate that the Respondent can properly conduct the actions required by this Order.
3. The Respondent has retained Mittelhauser Corporation & Laidlaw Environmental Services of Illinois, Inc. to perform the removal. U.S. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by the Respondent. In the event U.S. EPA disapproves of a selected contractor, Respondent shall retain a different contractor to perform the work, and such selection shall be made within two (2) business days following U.S. EPA's disapproval.
4. By May 19, 1992 Respondent shall implement the Work Plan as approved or modified by U.S. EPA. Failure of the Respondent to properly implement all aspects of the Work Plan shall be deemed to be a violation of the terms of this Order. The Work Plan shall require the Respondent to perform, and complete within 90 calendar days after approval, at a minimum, the following removal activities:
 - a. Implement the site safety and health plan, an air monitoring program and the sampling and analysis plan.
 - b. Provide for a contingency plan in the event of a release including possible evacuation of impacted residents.
 - c. Provide for 24 hour security at the site during all on-site activities and to ensure that no trespass occurs into the area of the potential release hazard.

- d. Excavate in the vicinity of the Test Pit identified as number TL5 to locate the buried VOCs and their source.
 - e. Secure and characterize for disposal purposes the liquids or drummed waste contents of the trench area where the VOCs are found in the TL5 excavation.
 - f. Conduct a limited extent of contamination survey along the southeast central periphery of the site to assure that no additional VOCs are encountered.
5. All materials removed from the Himco Dump Facility shall be disposed of or treated at a facility approved by the On-Scene Coordinator and in accordance with the Resource Conservation and Recovery Act of 1976 (RCRA), 42 U.S.C. Section 6901, et seq., as amended, the U.S. EPA Revised Off-Site Policy, and all other applicable Federal, State, and local requirements.
6. On or before the effective date of this Order, the Respondent shall designate a Project Coordinator. The U.S. EPA has designated Paul Steadman, of the Emergency and Enforcement Response Branch, Response Section II, as its On-Scene Coordinator. The On-Scene Coordinator and the Project Coordinator shall be responsible for overseeing the implementation of this Order. To the maximum extent possible, communication between the Respondent and the U.S. EPA, and all documents, reports and approvals, and all other correspondence concerning the activities relevant to this Order, shall be directed through the On-Scene Coordinator and the Project Coordinator. During implementation of the Work Plan, the OSC and the Project Coordinator shall, whenever possible, operate by consensus, and shall attempt in good faith to resolve disputes informally through discussion of the issues.
7. The U.S. EPA and the Respondent shall each have the right to change their respective designated On-Scene Coordinator or Project Coordinator. U.S. EPA shall notify the Respondent, and Respondent shall notify U.S. EPA, as early as possible before such a change is made. Notification may initially be verbal, but shall promptly be reduced to writing.
8. The U.S. EPA On-Scene Coordinator shall have the authority vested in an On-Scene Coordinator by the NCP, 40 CFR Part 300, as amended, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other response action undertaken by U.S. EPA or the Respondent at the facility.
9. No extensions to the time frames in this Order shall be granted without sufficient cause. All extensions must be requested, in writing, and shall not be deemed accepted unless approved, in writing, by U.S. EPA.

10. This Order and all instructions by the U.S. EPA On-Scene Coordinator or designated alternate that are consistent with the National Contingency Plan, this Order and the approved Work Plan shall be binding upon the Respondent, and the employees, agents, contractors, successors and assigns of the Respondent.

11. To the extent that the Facility or other areas where work under this Order is to be performed is owned by, or in possession of, someone other than the Respondent, Respondent shall attempt to obtain all necessary access agreements. In the event that after using their best efforts Respondent are unable to obtain such agreements, Respondent shall immediately notify U.S. EPA and U.S. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response activities described herein, using such means as it deems appropriate. Respondent shall reimburse U.S. EPA for all attorneys' fees and court costs it incurs in assisting Respondent to obtain access.

12. Respondent shall provide access to the Facility to U.S. EPA employees, and U.S. EPA-authorized contractors, agents, and consultants at anytime, and shall permit such persons to be present and move freely in the area in order to conduct inspections, including taking photographs and videotapes of the Facility, to do cleanup/stabilization work, to take samples, to monitor the work under this Order, and to conduct other activities which the U.S. EPA determines to be necessary.

13. This Order shall be effective on the date of signature by the Director, Waste Management Division.

14. Respondent shall provide a written monthly progress report to the On-Scene Coordinator regarding the actions and activities undertaken under this Order. At a minimum, these progress reports shall describe the actions that have been taken to comply with this Order, including all results of sampling and tests received or prepared by the Respondent and shall describe all significant work items planned for the next month.

15. Respondent agrees to retain for six years following completion of the activities required by this Order copies of all records, files and data relating to hazardous substances found on the site, or related to the activities undertaken pursuant to this Order, whether or not those documents were created pursuant to this Order. Respondent shall acquire and retain copies of all documents relating to the site that are in the possession of their contractors, agents and employees. Respondent shall notify U.S. EPA at least sixty (60) calendar days before any documents retained under this paragraph are to be destroyed. The documents retained under this paragraph shall be made available to the U.S. EPA upon request.

16. Respondent shall pay all oversight costs of the United States related to this removal action at the Himco Dump site which are not inconsistent with the National Contingency Plan. The United States shall submit an itemized cost statement entitled "Itemized Cost Summary" to Respondent annually or, if sooner, not less than 60 calendar days after submission of the Final Report provided for in Paragraph 20 of this Order. Payments shall be made within 60 calendar days of Respondents' receipt of the cost statement. Payments shall be made to the EPA Hazardous Substances Superfund delivered to the U.S. EPA, Attn: Superfund Accounting, P.O. Box 70753, Chicago, Illinois 60673, in the form of a certified or cashier's check payable to "EPA Hazardous Substances Superfund." The face of the check should note that the payment is for the Himco Dump site, Superfund Site Identification Number 4J. A copy of the check(s) submitted must be sent simultaneously to the U.S. EPA representatives indicated in Paragraph 17 below.

17. A notice, document, information, report, plan, approval, disapproval or other correspondence required to be submitted from one party to another under the Order shall be deemed submitted either when hand delivered or as of the date of receipt by certified mail, return receipt requested.

Submissions to the Respondent shall be submitted to:

Mittlehauser Corporation
1240 Iroquois Drive
Suite 102
Naperville, Illinois 60563

With a copy to:

Richard W. Paulen
Barnes & Thornburg
305 Ameritrust National Bank Building
301 South Main Street
Elkhart, Indiana 46516

Submissions to the U.S. EPA shall be submitted to:

Paul Steadman
On-Scene Coordinator
Response Section II
U.S. EPA (HSE-5J)
77 West Jackson Boulevard
Chicago, Illinois 60604
FAX (312) 353-9176

With a copy to:

Thomas Nash
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA (CS-3T)
77 West Jackson Boulevard
Chicago, Illinois 60604
FAX (312) 886-7160

18. If any provision of this Order is deemed invalid or unenforceable, the remainder of this Order shall remain in full force and effect.

PENALTIES FOR NONCOMPLIANCE

19. Respondent is advised pursuant to Section 106(b) of CERCLA, 42 U.S.C. Section 9606(b), that violation or subsequent failure or refusal to comply with this Order and any Work Plan approved under this Order, or any portion thereof, may subject the Respondent to a civil penalty of no more than \$25,000 per day for each day in which such violation occurs, or such failure to comply continues. In addition, failure to properly provide removal action upon the terms of this order, or other subsequent orders issued by U.S. EPA, may result in liability for punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C Section 9607(c)(3).

TERMINATION AND SATISFACTION

20. The Respondent shall submit a final report summarizing the actions taken to comply with this Order. The report shall contain, at a minimum: identification of the facility, a description of the locations and types of hazardous substances encountered at the facility upon the initiation of work performed under this Order, a chronology and description of the actions performed (including both the organization and implementation of response activities), a listing of the resources committed to perform the work under this Order (including financial, personnel, mechanical and technological resources), identification of all items that affected the actions performed under the Order and discussion of how all problems were resolved, a listing of quantities and types of materials removed, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination of those materials, and a presentation of the analytical results of all sampling and analyses performed and accompanying appendices containing all relevant paperwork accrued during the action (e.g., manifests, invoices, bills, contracts, permits). The final report shall also include an affidavit from a person who

supervised or directed the preparation of that report. The affidavit shall certify under penalty of law that based on personal knowledge and appropriate inquiries of all other persons involved in preparation of the report, the information submitted is true, accurate and complete to the best of the affiant's knowledge and belief. The report shall be submitted within sixty (60) calendar days of completion of the work required by the U.S. EPA.

21. The provisions of this Order shall be deemed satisfied upon payment by Respondent of all sums due under the terms of this Order and upon the Respondent's receipt of written notice from U.S. EPA that the Respondent has demonstrated, to the satisfaction of U.S. EPA, that all of the terms of this Order, including any additional tasks consistent with this Consent Order and Work Plan which U.S. EPA has determined to be necessary, have been completed.

INDEMNIFICATION

22. The Respondent agrees to indemnify and save and hold harmless the United States Government, its agencies, departments, agents, and employees, from any and all claims or causes of action arising from, or on account of, acts or omissions of the Respondent, its officers, employees, receivers, trustees, agents, successors or assigns, in carrying out the activities pursuant to this Order. The United States Government shall not be held as a party to any contract entered into by the Respondent in carrying out activities under this Order.

RESERVATION OF RIGHTS

23. This Order is not intended for the benefit of any third party and may not be enforced by any third party.

24. The U.S. EPA and the Respondent reserve all rights, claims, demands, and defenses, including defenses and denials of and to all determinations and findings, that they may have as to each other except as otherwise provided in this Order pursuant to any available legal authority. Nothing in this Order shall expand the Respondents' ability to obtain preenforcement review of U.S. EPA actions. Notwithstanding any reservation of rights, Respondent agrees to comply with the terms and conditions of this Order and consents to the jurisdiction of the U.S. EPA to enter into and enforce this Order.

25. Nothing herein is intended to release, discharge, limit or in any way affect any claim, causes of action or demands in law or equity which the parties may have against any persons, firm, trust, joint venture, partnership, corporation, or other entity

not a party to this Order for any liability it may have arising out of, or relating in any way to, the generation, storage, treatment, handling, transportation, disposal, release or threat of release of any hazardous substance, hazardous waste, contaminant or pollutant at or from the site. The parties to this Order hereby expressly reserve all rights, claims, demands and causes of action they may have against any and all other persons and entities who are not parties to this Order.

26. Nothing herein shall be construed: 1) to prevent U.S. EPA from exercising its right to disapprove of work performed by the Respondent(s); 2) to prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this order; 3) to prevent U.S. EPA from taking other legal or equitable action not inconsistent with the Covenant Not To Sue in Paragraphs 37 through 39 of this Order; 4) to prevent U.S. EPA from requiring the Respondent(s) in the future to perform additional activities pursuant to CERCLA, 42 U.S.C. Section 9601 et seq., or any other applicable law; or 5) to prevent U.S. EPA from undertaking response actions at the site.

FORCE MAJEURE

27. The Respondent shall cause all work to be performed within the time limits set forth herein and in the approved Work Plan, unless performance is delayed by "force majeure". For purposes of this Order, "force majeure" shall mean an event arising from causes entirely beyond the control of the Respondent and their contractors which delays or prevents the performance of any obligation required by this Order. Increases in costs, financial difficulty, normal inclement weather, and delays encountered by the Respondent in securing any required permits or approvals are examples of events that are not considered to be beyond the control of the Respondent.

28. Respondent shall notify the OSC within 24 hours after Respondent becomes aware of any event which Respondent contends constitutes a force majeure, with subsequent written notice within seven (7) calendar days of the event. Such written notice shall describe: 1) the nature of the delay, 2) the cause of the delay, 3) the expected duration of the delay, including any demobilization and remobilization resulting from the delay, 4) the actions which will be taken to prevent or mitigate further delay, and 5) the timetable by which the actions to mitigate the delay will be taken. Respondent shall implement all reasonable measures to avoid and/or minimize such delays. Failure to comply with the notice provision of this paragraph shall be grounds for U.S. EPA to deny Respondent an extension of time for performance. The Respondent shall have the burden of demonstrating by a preponderance of the evidence that the event is a force majeure, that the delay is warranted under the circumstances, and that

best efforts were exercised to avoid and mitigate the effects of the delay. If U.S. EPA determines a delay is or was attributable to a force majeure, the time period for performance under this Order shall be extended as deemed necessary by the OSC to allow performance.

DISPUTE RESOLUTION

29. The Parties to this Order on Consent shall attempt to resolve expeditiously and informally any disagreements concerning implementation of this Order on Consent or any Work required hereunder.

30. In the event that any dispute arising under this Order on Consent is not resolved expeditiously through informal means, any party desiring dispute resolution under this Section shall give prompt written notice to the other parties to the Order.

31. Within ten (10) calendar days of the service of notice of dispute pursuant to Paragraph 30 above, the party who gave notice shall serve on the other parties to this Order a written statement of the issues in dispute, the relevant facts upon which the dispute is based, and factual data, analysis or opinion supporting its position, and all supporting documentation on which such party relies (hereinafter the "Statement of Position"). The opposing parties shall serve their Statement of Position, including supporting documentation, no later than ten (10) calendar days after receipt of the complaining party's Statement of Position. In the event that these 10-day time periods for exchange of Statements of Position may cause a delay in the work, they shall be shortened upon and in accordance with notice by U.S. EPA.

32. An administrative record of any dispute under this Section shall be maintained by U.S. EPA. The record shall include the written notification of such dispute, and the Statements of Position served pursuant to the preceding paragraphs.

33. Upon review of the administrative record, the Director of the Waste Management Division, U.S. EPA, Region V, shall resolve the dispute consistent with the NCP and the terms of this Order.

NON-ADMISSION

34. The consent of the Respondent to the terms of this Order shall not constitute or be construed as an admission of liability or of U.S. EPA's findings or determinations contained in this Order in any proceeding other than a proceeding to enforce the terms of this Order.

CERCLA FUNDING

35. The Respondent waives any claims or demands for compensation or payment under Sections 106(b), 111 and 112 of CERCLA against the United States or the Hazardous Substance Superfund established by 26 U.S.C. §9507 for, or arising out of, any activity performed or expenses incurred pursuant to this Consent Order.

36. This Consent Order does not constitute any decision on preauthorization of funds under Section 111(a)(2) of CERCLA.

COVENANT NOT TO SUE

37. Upon termination and satisfaction of this Administrative Order pursuant to its terms, for and in consideration of the complete and timely performance by Respondent of the obligations agreed to in this Order, U.S. EPA hereby covenants not to sue Respondent for judicial imposition of damages or civil penalties for any failure to perform obligations agreed to in this Order except as otherwise reserved herein.

38. Performance of the terms of this Order resolves and satisfies the liability of the Respondent to U.S. EPA for work satisfactorily performed under this Order. U.S. EPA recognizes that, pursuant to Section 113 of CERCLA, the Respondent, upon having resolved their liability with the U.S. EPA for the matters expressly covered by this Order, shall not be liable for claims for contribution regarding matters addressed in this Order. Nothing in this Order precludes the Respondent from asserting any claims, causes of action or demands against potentially responsible parties (PRPs) who are not parties to this Order for indemnification, contribution, or cost recovery.

39. In consideration of the actions to be performed by the Respondent under this Order, the U.S. EPA covenants not to sue the Respondent, its successors or assigns for any and all claims which are available to the U.S. as against the Respondent under Sections 106 and 107 of CERCLA concerning all matters satisfactorily performed.

SUBSEQUENT AMENDMENT

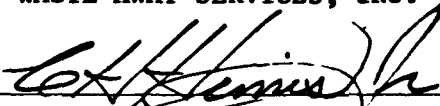
40. This Consent Order may be amended by mutual agreement of U.S. EPA and the Respondent. Any amendment of this Consent Order shall be in writing, signed by U.S. EPA and the Respondent and shall have as the effective date, that date on which such amendment is signed by U.S. EPA.

SIGNATORIES

Each undersigned representative of a signatory to this Administrative Order on Consent certifies that he or she is fully authorized to enter into the terms and conditions of this Order and to bind such signatory, its directors, officers, employees, agents, successors and assigns, to this document.

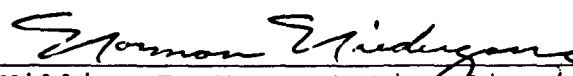

Agreed this 20th day of May, 1992.

HIMCO WASTE-AWAY SERVICES, INC.

By  Pres.
Charles H. Himes, Jr., President

The above being agreed and consented to, it is so ORDERED

this 15th day of June, 1992.

By 
 William E. Muno, Acting Director
Waste Management Division
U.S. Environmental Protection Agency
Region V, Complainant